

FILED

NOT FOR PUBLICATION

NOV 28 2006

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

No. 05-10835

Plaintiff - Appellee,

D.C. No. CR-03-00560-1-SOM

v.

ROBERT N. LUM, a.k.a. Bobby Lum,

MEMORANDUM*

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Defendant - Appellant.

DEC 26 2006

at 10 o'clock and 10 min. A.M.
SUE BEITIA, CLERK

Appeal from the United States District Court
for the District of Hawaii
Susan Oki Mollway, District Judge, Presiding

Submitted November 13, 2006**
Honolulu, Hawaii

Before: Trott, Wardlaw, and W. Fletcher, Circuit Judges.

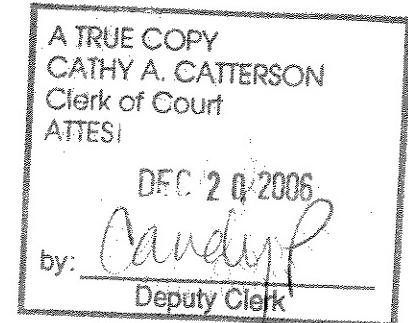
Robert Lum ("Lum") pled guilty to conspiring to distribute more than fifty grams of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 846. Lum now appeals the district court's denial of his motion to withdraw the guilty plea

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

prior to sentencing. Lum alleges he demonstrated a “fair and just reason” for withdrawal because his counsel misinformed him about the government’s willingness to ask the court for a downward departure. See United States v. Davis, 428 F.3d 802, 805 (9th Cir. 2005); Fed. R. Crim. P. 11(d)(2)(B). Because the district court (1) did not err in finding that Lum’s testimony lacked credibility, and (2) rested its decision to deny withdrawal of Lum’s plea on an accurate view of the law, we affirm the district court’s denial of Lum’s motion to withdraw his guilty plea.

AFFIRMED



INTERNAL USE ONLY: Proceedings include all events.
05-10835 USA v. Lum

UNITED STATES OF AMERICA
Plaintiff - Appellee

Louis A. Bracco, AUSA
808/541-2850
Suite 6-100
[COR LD NTC aus]
USH - OFFICE OF THE U.S.
ATTORNEY
PJKK Federal Building
300 Ala Moana Blvd.
P.O. Box 50183
Honolulu, HI 96850

v.

ROBERT N. LUM, a.k.a. Bobby
Lum
Defendant - Appellant

Cynthia A. Kagiwada
808/230-4430
[COR LD NTC cja]
P.O. Box 368
Kaneohe, HI 96744